SINGAPORE REPORTS

CHOW KIM HOONG v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Chua & Choor Singh JJ.) July 6, 1971]

[Singapore — Criminal Appeal No. 14 of 1970]

Criminal Law and Procedure — Trial — High Court — Accused tried for murder and for voluntarily causing hurt by dangerous weapon in same trial — Trial by 2 judges — Nullity — Supreme Court of Judicature Act (Cap. 15, 1970 Ed.), s. 10.

Penal Code, ss. 300 and 324 — Trial by 2 judges — Nullity.

The appellant was tried at one trial in respect of two charges, one of murder and the other under section 324 of the Penal Code, before a court by two judges, and was convicted on both charges.

Held: as the provision of section 10 of the Supreme Court of Judicature Act, which requires every proceeding in the High Court to be heard and disposed of by a single judge save as otherwise provided by any written law, had not been complied with, the trial was a nullity and the convictions must be set aside.

COURT OF CRIMINAL APPEAL.

John Tan Chor-Yong for the appellant.

Michael Khoo Kah Lip (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering oral judgment): It seems to us absolutely clear that section 10 of the Supreme Court of Judicature Act has not been complied with at the trial of this appellant because section 10 requires every proceeding in the High Court to be heard and disposed of by a single judge save as otherwise provided by any written law. Now in the case of a charge under section 324 or section 326 of the Penal Code the requirements of section 10 must be followed unless, of course, there is a written provision in the Criminal Procedure Code providing that the offence can be tried and disposed of before the High Court comprising of two judges. There is no such written provision in the Criminal Procedure Code.

The effect, therefore, of this appellant being tried at one trial in respect of the two charges, one of murder and the other under section 324 before a court of two judges is that the whole trial, the whole proceeding, is a nullity and as such then we must set aside the convictions and sentences in respect of both charges and order a re-trial. The appellant is to be tried at separate trials in respect of the two charges which were before the court below and we think it would be desirable that the trial in respect of the capital charge should be dealt with first. The appellant is remanded in custody until he is brought before the High Court.

Convictions and sentences set aside. Re-trial ordered.

Solicitors: *John Tan Chor-yong & Co.*

LEE MAU SENG v. MINISTER FOR HOME AFFAIRS, SINGAPORE & ANOR.

[O.C.J. (Wee Chong Jin C.J.) July 13, 1971]

[Singapore — Originating Motion No. 13 of 1971]

Constitutional Law — Habeas corpus — Detention under Internal Security Act (Cap. 115, 1970 Ed.) — Period of detention — Validity of order of detention — Right of person arrested to consult lawyer of his choice — Whether court can examine grounds and allegation of facts to determine whether they are vague unintelligible or inadequate — Whether mala fides is a justiciable issue in context of the Internal Security Act — Internal Security Act (Cap. 115, 1970 Ed.), ss. 8, 9, 11 and 12 — Constitution of Malaysia, arts. 5, 149 and 151 — Constitution of Singapore, arts. 5, 7 and 10(1)(b).

Constitutional Law — Fundamental rights — Person detained under Internal Security Act — Right to counsel — Constitution of Malaysia, art. 5.

This was an application for a writ of *habeas corpus*. On May 2, 1971, the applicant was arrested without warrant, by a police officer and remained in police custody until May 22, 1971, when an order of detention was made by the Minister for Home Affairs under section 8(1) of the Internal Security Act directing that he be forthwith detained for a period of two years. From the date of his arrest on May 2, 1971, until after the order of detention was made on May 22, 1971, the applicant was denied access to his solicitors in spite of requests by his solicitors for access to enable them to be instructed and advice him in regard to his arrest and detention by the police.

Two main but unrelated issues were raised by the applicant. The first was that from the time of his arrest and for 20 days thereafter his constitutional right to be allowed to consult a legal practitioner of his choice had been denied to him and the denial of this constitutional right amounted to an abuse of power such as would have justified an order for his release. The second was that the order of detention made on May 22, 1971 was void or invalid because (a) on the face of the order itself it was ambiguous and *ultra vires* and (b) the grounds on which the order was made and the allegations of fact on which the order was based were vague, inadequate and irrelevant, and (c) the order of detention was made in bad faith and, therefore, his detention was illegal or unlawful.

Held: (1) a person who is lawfully detained under the Internal Security Act is entitled to consult a legal practitioner of his choice as there is nothing in the Act inconsistent with the fundamental rights given by article 5(3) of the Constitution to a person who is arrested to be allowed to consult a legal practitioner of his choice;

(2) *habeas corpus* is not an available remedy to a person who after his arrest by the police and under lawful detention by the police under powers conferred by the Internal Security Act, has been refused by the police to be allowed his constitutional right under article 5(3) of the Constitution to be allowed a legal practitioner of his choice. Such a person must seek other available remedies, such as may be found in section 18(2) and the First Schedule of the Supreme Court of Judicature Act (Cap. 15, 1970 Ed);

(3) the words "if the President is satisfied ..." used in section 8(1) of the Internal Security Act must be so construed as to make that section *intra vires*. To construe those words to mean that the Legislature intended the President to be personally satisfied would be in conflict with article 5(1) of the Constitution of Singapore. However, to construe those words to mean "if the President acting in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet is satisfied" would be giving effect to and be completely consonant with the provisions of article 5(1). This view is fortified by the provisions of article 10(1)(b) where the words used, when it is intended that the President is to be personally satisfied, are "if the President *acting in his discretion* is satisfied ...";